

EXHIBIT A

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF MASSACHUSETTS
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4 IN RE: NEW ENGLAND) MDL NO. 13-02419-FDS
5 COMPOUNDING)
6 PHARMACY CASES LITIGATION)
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BEFORE: THE HONORABLE F. DENNIS SAYLOR, IV

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STATUS CONFERENCE

John Joseph Moakley United States Courthouse
Courtroom No. 2
One Courthouse Way
Boston, MA 02210

January 10, 2014
1:30 p.m.

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Official Court Reporter
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1 On November 13 last year, Judge Boal entered a discovery
2 order requiring all subpoena recipients to produce
3 documents pursuant to the PSC subpoena if they have a
4 patient who has sued them or a patient who has a case
5 pending in the MDL or given notice of a claim against a
6 clinic in the NECC litigation.

7 So far, 21 clinics have deposited documents
8 into the PSC repository at U.S. Legal Support. That
9 includes approximately 1300 documents and approximately
10 7,000 pages. There are 15, approximately 15 clinics
11 that have taken the position that they do not have any
12 such patients and are not required to produce any
13 documents except for a limited request, which Judge Boal
14 ruled applied to everybody.

15 Interestingly, some of the clinics who have
16 received notice of a claim, a standard letter saying we
17 represent the following individuals who have claims
18 against your healthcare provider in the NECC litigation,
19 some of the clinics who have received those notices
20 still feel that they don't have to respond to the
21 subpoena because the notice has not been properly given
22 under certain aspects of state law.

23 The PSC's position is that Judge Boal used
24 the term "notice of a claim" in its most commonly
25 understood form and didn't say anything about whether

1 that notice has to be done in compliance with the
2 particular requirements of one state or another.

3 So the PSC is conducting meet and confers
4 and will be also preparing to file a motion to compel
5 with respect to one such clinic here very shortly.

6 THE COURT: All right. Anyone else want to
7 be heard on this topic? That's item Number 6.

8 Item Number 7, matters referred to by
9 Judge Boal. Before we get into that, there are a couple
10 of dangling issues raised by the St. Thomas entities.
11 Back at the end of November, St. Thomas had as part of
12 their -- a number of motions that it filed to
13 reconsider, my MDL order and so forth, there was a
14 motion to amend the protective order.

15 I have finally resolved that. I had hoped
16 to have it filed before today so that you could see it.
17 I'm technically granting it in part and denying it in
18 part. I'm going to make some minor tweaks to that
19 protective order, but most of the issues raised by
20 St. Thomas, I think, are either covered in the order or
21 I think it's not necessary to amend the order to
22 address. That we'll get out shortly, hopefully even
23 today.

24 Part of what St. Thomas raised was also a
25 motion to stay discovery pending a discovery plan. I do

1 want to take this up at some point today. What I said
2 about having a discovery plan for the affiliated
3 defendants obviously applies to the unaffiliated
4 defendants as well, some degree of planning and
5 coordination needs to be done here. You know, even in a
6 simple case, we have a scheduling conference where the
7 parties have to meet and confer. That needs to be
8 discussed as well.

02:18PM 9 We don't necessarily need to resolve it
10 today, but that issue does need to be resolved, and with
11 that as an introduction, who's going to take the lead on
12 item 7, Ms. Parker?

13 MS. PARKER: Actually Ms. Dougherty I
14 believe and Mr. Zamora will be addressing that.

15 THE COURT: Ms. Dougherty.

16 MS. DOUGHERTY: Thank you, your Honor.
17 Travellers' motion to quash at this point in time is
18 being negotiated by the PSC with Travellers. Travellers
19 is the insurer for Liberty party in the mediation. At
02:19PM 20 this point, some compromises have been made and reached.

21 THE COURT: I thought Liberty said it had no
22 insurance? Well, whatever. Go ahead.

23 MS. DOUGHERTY: Interesting, yes, and so at
24 this point, the plaintiffs' steering committee sought an
25 extension of time to respond, and your Honor granted

1 that extension of time, and hopefully we'll be able to
2 resolve these issues with Travellers without having to
3 seek further Court intervention, but if we are unable to
4 resolve it, that's been referred to Judge Boal, and we
5 anticipate that there may be argument on that on
6 February 6th.

7 THE COURT: What is the status before
8 Judge Boal of dealing with the fact sheets, releases,
9 protective order, that process? Is there a hearing set
10 for that as well?

02:20PM

11 MR. ZAMORA: Judge, there is. This is
12 Mark Zamora for the plaintiffs' steering committee.
13 It's set for February 6th, and, Judge, Ms. Greer and I
14 had a cordial conversation before today's hearing. I
15 think if you looked at it in terms of complexity from
16 least to most, perhaps contentious from least to most,
17 we are mindful of a final meet and confer that's to be
18 completed on the 17th, so I think if you look at the
19 order, the first issue is going to be best protocol, and
20 she may disagree, I think we can both find agreement on
21 probably 90 percent of the nuts and bolts procedure.

02:20PM

22 A few of the other items I don't think are
23 road blocks, and I don't think Judge Boal would want to
24 be troubled with some of those issues, and so I think
25 we'll progress there and may not even have anything to

1 discuss.

2 The second component would be the medical
3 releases. There still is some language that we are
4 discussing, but I am hopeful, I think, that in substance
5 that we'll have agreement, and if there's a real issue
6 that's significant, that will be the only thing that
7 Judge Boal considers.

8 The next item, I think we have made
9 substantial progress this week has been the fact sheet.
10 I'm mindful of your comments at the last hearing.

02:21PM

11 THE COURT: As you can tell, I took
12 something of a Goldilocks approach, which is I wanted
13 this to be not too detailed and not too simple.

14 MR. ZAMORA: I think we're getting to right
15 about to the middle, and so there are ongoing disputes
16 that mainly relate to how far back certain requests go.
17 In truth, we handed her material today, and so I am
18 hopeful that more likely than not Judge Boal will be
19 handling that, but those are the most substantial
20 issues. I think we probably lean a little more to the
21 detail as opposed to where we were.

02:21PM

22 With respect to the ESI, I think we're
23 mindful that that's going to guide some other entities
24 as well. There's still some more to be done, but I'm
25 pretty confident that we're going to get there. To that

1 end, we're going to have a call, we'll invite all
2 participants who are parties to the litigation on the
3 15th, which is currently set for 4:30, which is 30
4 minutes after the proof of claim forms are going to be
5 put to bed. If folks aren't blurry-eyed, we'll have the
6 call, and I think what Ms. Parker's view is we'll
7 circulate a number on the 15th, and Ms. Greer and I and
8 others will be involved in the discussion of the nuts
9 and bottles of those issues.

02:22PM

10 THE COURT: All right. Anything else on
11 item 7?

12 (No response)

13 THE COURT: All right. Item 8.

14 MR. SOBOL: So on item 8, your Honor, and
15 you flagged it at least twice already today, the
16 question is what's going to be the plan from here on in.
17 The long and short of it, what I would like to suggest,
18 your Honor, is that before the next status conference --
19 well, should I first put in context what will we be
20 talking about?

02:22PM

21 There's still going to be litigation with
22 St. Thomas, we don't know with Virginia, and then we've
23 got, whatever, a couple of dozen other clinics that are
24 out there. Obviously, we can't put together a plan
25 regarding all of that all at once. We've got to start

1 picking. Where are we going to start?

2 Well, it seems to me we're going to start
3 from the plaintiffs' steering committee point of view,
4 we'll start with St. Thomas, and what I'd like us to do
5 is to meet and confer with St. Thomas. If we can agree
6 on a plan, we'll submit an agreed plan; if we can't
7 agree on a plan, we'll submit counterproposals and hash
8 it out at the next status conference.

02:23PM 9 In that context, too, it's not that the
10 plaintiffs' steering committee is looking exclusively at
11 St. Thomas, but we have to do the census that we'll do
12 next week on a proposed, some lawyers outside the PSC,
13 it's what they think makes sense in terms of other
14 litigation activities we engage in, but from the
15 plaintiffs' steering committee point of view, we'd like
16 to be at the next status conference either talking about
17 an agreed schedule or disagreement on a schedule to tee
18 up a trial for St. Thomas.

02:23PM 19 THE COURT: All right. This raises a
20 question. The Roanoke Gentry, Locke plaintiffs in their
21 papers talking about the transfer of cases raise the
22 issue of, and I'm paraphrasing here, but the thrust of
23 it was that a case arising in southwest Virginia ought
24 to be tried to a southwest Virginia and not up here in
25 far away, cold Boston.

1 My assumption from day one has been that
2 when cases are ready for trial, they get spun out to the
3 individual home districts where they first arose.
4 Again, this seems to me putting aside the so-called
5 national defendants that if what the case is is against
6 a pain clinic and a doctor, that probably those cases
7 ought to be spun out for trial to where they originated.

8 I have not done any sophisticated thinking
9 on that topic, and it obviously depends on what the
02:25PM 10 cases look like and so on, but that's going to affect
11 what cases are selected as bellwethers. All this by way
12 of saying, this is not a typical case where, you know,
13 you have pharmaceutical product X, and the question is
14 did it cause injury Y, and was appropriate testing done
15 and so forth.

16 I think that's not going to be the central
17 issue in these cases, so it's not clear to me what this
18 is going to look like, where these cases are going to be
19 tried, and what the stage in the process we need to
02:25PM 20 begin talking about that, but certainly it was too soon
21 to be thinking about it a month ago, at least when we
22 were issuing orders, and it's one more thing. I think
23 we ought to formulate a step at a time. It depends very
24 much what these cases look like, who the defendants are
25 and what happens from there.

1 MR. SOBOL: Right. And how many defendants
2 there are, whether or not you've got a national
3 defendant or just a local defendant.

4 THE COURT: Right. Presence or absence of a
5 national defendant may make a difference.

6 MR. SOBOL: And our proposal will consider
7 that. I don't think necessarily people have to land on
8 a final decision on that issue on February 6th or
9 whatever the next status conference is, and we'll also
02:26PM 10 look into whether or not it makes sense for this Court
11 to sit on a trial down in the middle of Tennessee or
12 not.

13 THE COURT: Well, I'd be amenable to
14 anyplace warmer than here, which excludes then the
15 midwest at this point in time. I think somewhere we
16 have lawyers from Traverse City, Michigan, and my mother
17 lives in Traverse City, Michigan, and it was 10, 15
18 below zero for long stretches. She didn't even go
19 outside to the mailbox.

02:26PM 20 All right. Anything else on item 8? Yes,
21 Ms. Greer.

22 MS. GREER: It's not clear where the
23 deposition protocol and ESI and discovery plans stand at
24 this point. There hasn't been an order on that
25 referring it to Judge Boal, and so we just would ask for

1 some clarification as to whether you're going to be
2 handling that because we're hearing a lot about meet and
3 confer. We are working on protocols, we are exchanging
4 them, but they're kind of in no man's land right now.

5 THE COURT: Why don't I do this. Certainly
6 as to the St. Thomas entities that you represent, I'm
7 going to direct the parties to meet and confer on the
8 discovery plan. I may spin some of this off to
9 Magistrate Judge Boal, I may keep it, I don't know, but
02:27PM 10 certainly it makes sense for you all to get together and
11 talk about what you think makes sense to see if you can
12 agree, and we'll handle it that way. Okay.

13 MS. GREER: Okay.

14 THE COURT: Does that work?

15 MS. GREER: Does that go for the deposition
16 protocol and my protocol are kind of --

17 THE COURT: I was thinking of discovery
18 protocol, which, in other words, discovery from
19 plaintiffs are going to be dealt with in the short term,
02:27PM 20 the fact sheets and so forth. Discovery from your
21 client's perspective, I want you to meet and confer and
22 talk about a possible plan. I don't know what the ESI
23 issues are, I don't know what the volume of documents
24 are. I don't have any idea what the issues are, and
25 step 1 is for you to confer with one another, and as

1 Mr. Sobol suggested, if you can agree on a plan, that's
2 great, if you can't, let's tee it up, I may decide it, I
3 may refer it to Magistrate Judge Boal, and we'll go from
4 there.

5 MS. GREER: Our thinking, right or wrong,
6 was that the discovery plan we talked about in sequence,
7 you had talked about having written discovery first and
8 then depositions, et cetera.

9 THE COURT: That's usually the way it works.

02:28PM

10 MS. GREER: Usually in my experience, and
11 then separate from that would be an ESI protocol that
12 just deals with the ESI issue which would be cumbersome
13 documents and just deals with the separate protocol, and
14 we have been working on drafts of those, so I just
15 wanted to make sure that you understood how this is
16 playing out kind of in the real world, and we're okay
17 with that.

18 THE COURT: All right. That's fine. Again,
19 from my perspective, what I want is I want there to be
20 some degree of planning, I want it to be fair, I want
21 this to be as organized as it can be under the
22 circumstances. Obviously, I'm doing a lot of this kind
23 of ad hoc, but as in any case before you take discovery
24 from the other side, there needs to be some kind of plan
25 in place or order that directs and sets deadlines and so

02:29PM

1 on, so why don't we get working on that.

2 If your client is in the cross-hairs and it
3 looks like it is, you need to meet and confer with the
4 plaintiffs' counsel and try to come up with either a
5 joint plan or a pair of proposals that I can choose
6 between.

7 MS. GREER: Will do.

8 THE COURT: If you want intelligent
9 commentary on any ESI protocol, you may have to find
02:29PM 10 another Judge. I'm not sure I'm the right person for
11 that.

12 Item 9, notice of instructions for accessing
13 repository.

14 MS. PARKER: Yes, your Honor, the
15 plaintiffs' steering committee sent a letter to all
16 defendants in the MDL, both unaffiliated and affiliated,
17 sharing information about the document repositories and
18 also providing some instructions for how access to those
19 repositories can be gained. Out of an abundance of
02:30PM 20 caution, we also took the liberty of ECFing a notice of
21 those instructions to make sure that every participant
22 in the MDL understood how those repositories could be
23 accessed.

24 THE COURT: Okay. Anything else on that?

25 (No response)

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C E R T I F I C A T E

UNITED STATES DISTRICT COURT)
DISTRICT OF MASSACHUSETTS) ss.
CITY OF BOSTON)

I do hereby certify that the foregoing
transcript, Pages 1 through 70 inclusive, was recorded
by me stenographically at the time and place aforesaid
in MDL NO. 13-02419-FDS, IN RE: NEW ENGLAND COMPOUNDING
PHARMACY CASES LITIGATION and thereafter by me reduced
to typewriting and is a true and accurate record of the
proceedings.

Dated this January 22, 2014.

s/s Valerie A. O'Hara

VALERIE A. O'HARA

OFFICIAL COURT REPORTER